

**United States Department of Labor
Employees' Compensation Appeals Board**

L.B., Appellant

and

**DEPARTMENT OF VETERANS AFFAIRS,
MID-ATLANTIC CONSOLIDATED PATIENT
ACCOUNT CENTER, Martinsburg, WV,
Employer**

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) **Docket No. 21-0140**
) **Issued: August 25, 2021**
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Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

ORDER REMANDING CASE

Before:

ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

On November 9, 2020 appellant filed a timely appeal from an August 27, 2020 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards docketed the appeal as No. 21-0140.

On August 8, 2017 appellant, then a 45-year-old program support assistant, filed an occupational disease claim (Form CA-2) alleging that she developed an emotional condition due to factors of her federal employment, including harassment and discrimination by her supervisors. She alleged that she worked in a hostile environment and suffered from post-traumatic stress disorder, stress, anxiety, and high blood pressure. Appellant noted that she first became aware of her condition on August 1, 2016 and of its relationship to her federal employment on July 19, 2017. She stopped work on July 19, 2017.

By decision dated February 2, 2018, OWCP denied appellant's occupational disease claim, finding that the evidence of record was insufficient to establish a compensable factor of federal employment.

On August 11, 2020 appellant requested reconsideration and wrote, “past timely filing due to error.”

In an attached undated statement, appellant argued that the evidence demonstrates clear evidence that error in the processing of her claim. She explained that her request for reconsideration was untimely filed because her representative initially believed that her claim would be settled within her Equal Employment Opportunity (EEO) claim; however, she was later informed that she would be unable to recover lost wages through her EEO settlement. Appellant noted that her claim was settled with regard to the hostile work environment based on race, color, and reprisal, and she was awarded a lump sum, which did not include her lost wages.

OWCP received an undated report from Jyotsna Milbourne, a clinical psychologist, discussing appellant’s therapy for workplace stress: May 24, June 23 and 27, July 6 and 10, and November 16 and 30, 2017, and February 15, and April 27, 2018 e-mails and correspondence from J.H., a manager, to appellant; a May 2, 2019 statement from L.H., a coworker, who provided details regarding appellant’s work environment; and a November 9, 2017 statement from appellant’s spouse, describing employment factors that she had related to him. It also received the second page of a traumatic injury claim (Form CA-1) dated May 22, 2017.

By decision dated August 27, 2020, OWCP denied appellant’s reconsideration request, finding that it was untimely filed and failed to demonstrate clear evidence of error. It explained that “[t]he basis for this decision is you only submitted the [appeal] rights form stating your election of appeal is past timely filing due to error, but you did not elaborate on what the error is or explain the specific reason for the delay.”

The Board has duly considered the matter and finds that the case is not in posture for decision. In the case of *William A. Couch*,¹ the Board held that when adjudicating a claim OWCP is obligated to consider all evidence properly submitted by a claimant and received by OWCP before the final decision is issued. As detailed above, on reconsideration appellant submitted a statement received on August 11, 2020. She also submitted additional evidence including medical evidence from a clinical psychologist, correspondence from her manager, statements from a coworker and her husband. OWCP, however, did not review this argument and/or evidence in its August 27, 2020 decision. It, thus, failed to follow its procedures by not considering all of the relevant evidence of record.²

As Board decisions are final with regard to the subject matter appealed, it is crucial that OWCP address all relevant evidence received prior to the issuance of its final decision.³ The Board

¹ 41 ECAB 548 (1990); see *K.B.*, Docket No. 20-1320 (issued February 8, 2021); see also *R.D.*, Docket No. 17-1818 (issued April 3, 2018).

² OWCP’s procedures provide that all evidence submitted should be reviewed and discussed in the decision. Evidence received following development that lacks probative value also should be acknowledged. Whenever possible, the evidence should be referenced by author and date. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Denials*, Chapter 2.1401.5(b)(2) (November 2012).

³ *E.D.*, Docket No. 20-0620 (issued November 18, 2020); see *C.S.*, Docket No. 18-1760 (issued November 25, 2019); *Yvette N. Davis*, 55 ECAB 475 (2004); see also *William A. Couch*, *supra* note 1.

finds that this case is not in posture for decision, as OWCP did not address the above-noted evidence in its August 27, 2020 decision.⁴ On remand, following any further development as deemed necessary, OWCP shall issue an appropriate decision.

IT IS HEREBY ORDERED THAT the August 27, 2020 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this order of the Board.

Issued: August 25, 2021
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

⁴ *D.S.*, Docket No. 20-0589 (issued November 10, 2020); *see V.C.*, Docket No. 16-0694 (issued August 19, 2016).